

Aquinas as an advocate of abortion?: The appeal to 'delayed animation' in contemporary Christian ethical debates on the human embryo.

Summary

It has become common, in both popular and scholarly discourse, to appeal to 'delayed animation' as an argument for abortion (DAAA). Augustine and Aquinas seemingly held that the rational soul was infused midway in pregnancy, and therefore did not regard early abortion as homicide. The authority of these thinkers is thus cited by some contemporary Christians as a reason to tolerate or, for proportionate reasons, to promote first-trimester abortion and embryo experimentation. The present paper is an exercise in aetiology. It examines the relatively recent origins of DAAA (post 1950). Distinctions are drawn between different forms of DAAA in historical context, premises, and conclusions. Appeal to precedent alone is a weak argument but some DAAAs raise important anthropological questions. Nevertheless even the stronger DAAAs are not indefeasible and it is argued that, in case of doubt, the human embryo should be granted the respect and protection due to a person.

KEYWORDS; Abortion, Aquinas, Augustine, Delayed Animation, Ensoulment, Embryo

A statement of the argument

The first time that the author came across the argument that is the topic of this paper was in 2001, in a statement in the House of Lords by the Anglican Bishop of Oxford, Richard Harries. Referring to the legal protection that many Christians (and particularly the Roman Catholic Church) seek to give to the human embryo, he stated that:

'I should like to suggest that it was only in the 19th century that the position became firmed up. Earlier Christian thought on this subject indicates an awareness of a developing reality, with developing rights as we would put it.'¹

This, it transpired, was far from an isolated opinion. It was, rather, an example of an argument that has become common both in scholarly and in popular discourse on the status of the human embryo, and that has been invoked by legislators both in the United Kingdom and in the United States.

In August 2008 the Speaker of the United States House of Representatives, Nancy Pelosi, was asked when human life begins. She replied: 'I would say that as an ardent, practicing Catholic, this is an issue that I have studied for a long time. And what I know is, over the centuries, the doctors of the Church have not been able to make that definition. St Augustine said "at three months." We don't know. The point is that it shouldn't have an impact on a woman's right to choose.'²

The comments of Nancy Pelosi raised a storm of controversy³ and also led to Senator Joe Biden, another prominent Catholic politician, being asked the same question. He stated that 'I voted against

¹ Hansard 621 part.16, col.35-37 (22 Jan 2001)

² Interview on *Meet the Press* 24 August 2008.

³ For example, USCCB News Release 'Bishops Respond to House Speaker Pelosi's Misrepresentation of Church Teaching Against Abortion'; W.E. May, 'Abortion and Ensoulment: Augustine and Aquinas vs. Pelosi and Biden, Part I' *Culture of Life Foundation Briefs* September 16, 2008; E.C. Brugger, 'Pelosi on Abortion' *Culture of Life*

curtailing the right, criminalizing abortion. I voted against telling everyone else in the country that they have to accept my religiously based view that it's a moment of conception. There is a debate in our church, as Cardinal Egan would acknowledge, that's existed. Back in [the] *Summa Theologiae* when Thomas Aquinas wrote [the] *Summa Theologiae* he said there was no [soul] – it didn't occur until quickening, 40 days after conception.⁴

Also in 2008, in the United Kingdom, the newly appointed chair of the Human Fertilisation and Embryology Authority, Lisa Jardine, was asked about the Catholic Church's view on the moral status of the human embryo. She replied that, 'it was only relatively recently that the date at which the soul enters the embryo was moved back to fertilisation. St Augustine believed that it happened when the baby kicked in the womb - 17 weeks - and that suited for a very long time'.⁵

Similar comments can be found among Catholic philosophers and theologians who disagree with the Magisterial teaching of the Catholic Church. Thus Nick Gier, emeritus professor in the Department of Philosophy at the University of Idaho, says of Aquinas that, 'As surprising as it sounds, the greatest Catholic theologian, declared infallible[sic] by Pius IX, would have agreed with *Roe v. Wade*.'⁶ Again, Rosemary Radford Ruether has asserted that 'A careful study of the Catholic tradition of such major theologians as Thomas Aquinas, in the context of modern embryology, in fact supports the pro-choice position in the first two trimesters'.⁷

Such comments and publications have not gone unopposed, and there is a lively scholarly counter literature showing the consistency of Christian, and particularly Catholic, ethical concern for the human embryo over the centuries. What has not been attempted so far is an account of where this modern argument came from, when it arose, and what different forms it has taken. The present paper is an exercise in aetiology. It considers the reasons for the recent emergence of this argument within the Christian tradition. As the argument is framed as an appeal to historical precedent, it is fitting to inquire as to the historical precedent of this argument itself. Whence did it emerge?

There are, of course, subtle differences between the claims and conclusions propounded even in these few quotations, and this paper will distinguish different forms of the argument. One form takes as its premise the proposition that Augustine, Thomas Aquinas and/or other prominent Christian theologians held that the rational soul was not present at conception but that it was given at a later stage of embryonic development. From this it is argued that these thinkers would not have regarded embryonic stem cell research or first-trimester abortion as involving homicide. The moral authority of these thinkers, or of the Christian tradition more generally, is thus cited as a reason for Christians to tolerate or, for proportionate reasons to promote, embryo experimentation and early

Foundation Briefs September 2, 2008; To these may be added innumerable more or else well-informed discussions on the topic on various blogs.

⁴ Interview on *Meet the Press* 7 September 2008.

⁵ S. Byrnes, 'There is a debate to be had – a serious debate – about conscience: Sholto Byrnes talks to Lisa Jardine', *New Statesman* 26 May (2008), 24-27.

⁶ N. Gier, 'Catholics May Have Good Reasons To Support Abortion Reform', *The Palouse Pundit* 23 May (2007).

⁷ R.R. Ruether endorsement of D.A. Dombrowski and R. Deltete, *A brief liberal Catholic defense of abortion* (Urbana: University of Illinois Press, 2000).

abortion. The aim of this argument is to use the Catholic tradition to undermine the credibility of the present teaching of the Catholic Church against abortion and research on human embryos.

A slightly different form of the argument aims to show that consideration of philosophical or theological anthropology within a contemporary context justifies conclusions similar to those held by Augustine or Thomas Aquinas. Such an argument may well appeal explicitly to Thomistic philosophical principles. However, the conclusion is here drawn not from appeal to historical precedent *per se* but from anthropological considerations. Nevertheless, while these forms of the argument are distinguishable, they have a common logic: they each invoke delayed animation, or some analogous concept, as a reason for tolerating or promoting early abortion and embryo experimentation. In this paper, this pattern of argument will be termed *delayed animation as an argument for abortion* (DAAA).

A brief history of delayed animation

Prior to describing the modern emergence of DAAA it is necessary to sketch, even if in the broadest terms, the shape of the longer tradition to which the proponents of DAAA appeal: the rise, fall and revival of the concept of delayed animation. The following is a very general account and will of necessity simplify many aspects of the Western intellectual tradition. It is presented here only to show how many different aspects of intellectual culture were touched by the idea that there is a fundamental moral and metaphysical transition in the status of the human embryo that occurs at a certain point during development. For a more comprehensive account see works by Connery,⁸ Jones⁹ and Dellapenna.¹⁰

It is widely accepted that the idea of delayed animation originates with the ancient Greeks. Early medical writers¹¹ made a biological distinction, which Aristotle understood to reflect a philosophical distinction, between the *unformed* and the *formed* embryo. Aristotle argued that the early unformed embryo was animated by a vegetative soul and then by a generic sensitive soul and only the fully formed embryo was animated by the specific soul of the animal (in the case of human beings, the specifically rational soul).¹² Aristotle famously thought the body of human embryo was fully formed at 40 days for males and 90 days for females.¹³

⁸ J. Connery, *Abortion: The Development of the Roman Catholic Perspective* (Chicago: Loyola University Press 1977).

⁹ D.A. Jones, *The Soul of the Embryo: An enquiry into the status of the human embryo in the Christian tradition* (London: Continuum, 2004).

¹⁰ J.W. Dellapenna, *Dispelling the Myths of Abortion History* (Carolina Academic Press, 2006).

¹¹ See for example, 'The Seed and The Nature of the Child' in G.E.R. Lloyd (ed.) *Hippocratic Writings* J Chadwick, W.N. Mann, I.M. Lonie, E.T. Withington (trans.) (Harmondsworth: Penguin Classics, 1983), pp.317-346.

¹² Aristotle *Generation of Animals* 2.3 736b 2-5, though there are good reasons to think that Aristotle held that the rational soul was present in the embryo *in potentia* from the conception. See Jones *Soul of the Embryo* pp. 27-30; D.A. Jones 'Thomas Aquinas, Augustine and Aristotle on "delayed animation"', *The Thomist* [forthcoming].

¹³ Aristotle *History of Animals* 7.3, 583b 3-5.

From the second century before the Common Era, Greek thought came to exercise a strong influence on the practice of Judaism, most evidently through the Septuagint translation of the Jewish Scriptures (LXX). One small example is the translation of Exodus 21.22-25, which introduces a distinction between the unformed and formed embryo that is not in the Hebrew text.¹⁴ The distinction later appears in the writings of Philo and later still in some passages in the Talmud. From the LXX, and the Old Latin translation of the Bible which was based upon it, the distinction entered the Christian tradition especially from the 5th century of the Common Era. This was largely through Christian sermons and commentaries on Scripture, of which some of the most influential were by or were ascribed to Augustine of Hippo.¹⁵

The distinction between the unformed or unanimated embryo and the formed or animated embryo was thus present in some Greek medical and philosophical literature, and in both Jewish and Christian writings, in the period immediately prior to the emergence of Islam. It is therefore unsurprising that very similar ideas are found in the Quran and the Haddith and are reflected in later Islamic philosophical and medical writings.¹⁶

Within the Western Christian tradition patristic sermon and commentary material began to inform the public discipline of the Church, both in relation to books of penance and in relation to various penalties of canon law. In some cases the law made no distinction between early and late abortion but for some purposes greater penalties were imposed on abortion after 'animation'.¹⁷

When Thomas Aquinas was writing in the 13th century, many of his available sources contained some trace of the idea of delayed animation. This was true of the philosophy of Aristotle (especially as mediated by earlier Christian and Islamic philosophers), of the theology of Augustine (especially as this was mediated by the later Latin tradition) and of canon law. Thomas Aquinas was in fact very conventional for a Catholic theologian of his day in holding that 'the intellectual soul is created by God at the end of human generation',¹⁸ by which he meant, after the body of the embryo was formed, which for male infants was thought to be at 40 days or there about.

The moral implications of the distinction between unanimated and animated embryo were debated among moral theologians from the 15th century (for example, by Antoninus of Florence) to the 18th

¹⁴ Jones, *Soul of the Embryo* pp. 46-56; D.A. Jones 'Exodus 21 and Abortion' *Triple Helix* No.45 (Summer 2009), pp. 16-18.

¹⁵ This is somewhat ironic as Augustine was in fact deeply sceptical both about the origin of the soul and the timing of animation, See Augustine *de anima et eius origine*; Jones, *Soul of the Embryo* pp. 102-108; Jones, 'Thomas Aquinas, Augustine and Aristotle'.

¹⁶ Dunstan, G. (ed.) *The Human Embryo: Aristotle and the Arabic and European Traditions*, (Exeter: University of Exeter Press, 1990).

¹⁷ Connery, *Abortion*, pp. 46-104; Jones, *Soul of the Embryo*, pp. 57-74.

¹⁸ Thomas Aquinas, *Summa Theologiae* I, q. 118, a. 2, ad 2.

century (for example, by Alphonsus Liguori).¹⁹ However, for much of this time debate was distorted by the 'polemics of the rigorist and the probabiliorists against the laxists and probabilists'.²⁰

From medieval canon law the idea of delayed animation also entered English common law in that some jurists held that abortion was an offence only after 'quickening', the moment when the child was first felt to move. This approach to the legal status of the fetus was reflected in the first statute law on abortion in the UK (the Ellenborough Act (1803), the Lansdowne Act (1828)) and in the United States (in Connecticut in 1821), all of which include reference to the woman being 'quick with child'.²¹

The gradual abandonment of delayed animation

The idea of delayed animation, or something closely analogous, was thus reflected in many aspects of the Western intellectual tradition – medical-biological, philosophical, theological, canon-legal, moral-theological and legal – keeping in mind that each of these strands of the tradition is in fact very complex, sometime ambiguous, and not always expressed in the same terms.

The influence of the idea of delayed animation petered out in the mid-19th century, but its zenith was much earlier – in the 13th century – and it was arguably already on the wane by the 16th century. The effect of the Renaissance and the Reformation had been to undermine the authority of scholastic theology and of traditions not rooted in Scripture. A fresh reading of the Scriptures in the original languages showed the LXX distinction not to be present in the Hebrew of Exodus, while a fresh reading of Augustine showed him to be careful not to deny the possible presence of the soul from conception.²² Much more significantly, the scientific revolution of the 17th century dislodged reliance on Aristotelian natural science. The scientific investigations of William Harvey and other early modern scientists gave reason for tracing the beginning of human life to the moment of fertilisation of a human egg.²³ Subsequent scientific advances (such as 20th-century discovery of the mechanism of genetic inheritance) only served to reinforce the significance of fertilisation and the fundamental continuity of development from conception until birth.

¹⁹ Connery, *Abortion*, pp. 105-224; Jones, *Soul of the Embryo*, pp. 175-193.

²⁰ C. Curran 'The Role and Function of the Scriptures in Moral theology' reprinting in C. Curran and R. McCormick (eds) *Moral Theology No. 4: The Use of Scripture in Moral theology* (New York: Paulist Press, 1983) p. 180.

²¹ Dellapenna, *Dispelling the Myths*; J. Keown, *Abortion, doctors and the law: Some aspects of the legal regulation of abortion in England from 1803 to 1982* (Cambridge: Cambridge University Press, 1988), pp. 3-4, 10-11; J. Keown, 'Back to the future of abortion law: Roe's rejection of America's history and traditions' *Issues in Law and Medicine* 22.1 (2006), pp. 3-37. It should be noticed, however, that the term 'quick with child' could simply mean pregnant with a living child and not all jurists identified this phrase with 'quickening' (i.e. the first movement of the child), thus the history of the legal use of this concept requires careful examination of how it was applied in actual cases.

²² On the influence of Augustine on the Reformers, particularly in regard to traducianism see G.H. Williams, 'Religious residues and presuppositions in the American debate on abortion' *Theological Studies* 31:1 (1970), pp. 10-75.

²³ Jones, *Soul of the Embryo*, pp. 156-174. See also J. Needham, *A History of Embryology* (Cambridge: Cambridge University Press, 1959) which after half a century remains a valuable resource for this topic.

By the 19th century when the first statutes were passed against abortion, references to ‘quick with child’ were already anachronistic and somewhat of an embarrassment to doctors. In the mid-19th century, criminal law (for example, the Offences Against the Person Act 1837) and Catholic Canon Law (in 1869) caught up with biology. By the time the World Medical Association agreed in 1948 to ‘maintain the utmost respect for human life from the time of its conception’²⁴ there was a broad medical, philosophical, legal, secular and religious consensus on the identification of fertilisation as the beginning of human life.²⁵

The recent re-emergence of delayed animation

In the first half of the 20th century there was thus a broad consensus that human life began at conception and was worthy of the ‘utmost respect’ from the very beginning. However, there were two factors that sustained interest in delayed animation among theologians during this period.

Within the context of early 20th century Catholic theology, acceptance of delayed animation was undoubtedly helped by the decision by Pope Leo XIII to ‘to restore the golden wisdom of St. Thomas, and to spread it far and wide for the defense and beauty of the Catholic faith, for the good of society, and for the advantage of all the sciences’.²⁶ He effectively established Thomism as the norm for philosophy and theology within the Catholic Church, a decision given the force of law in the 1917 Code of Canon Law.²⁷ This encouraged a generation of philosophers and theologians to see Thomas as the most reliable guide in all matters excepting only those which had been condemned unequivocally (such as Thomas’s denial of the doctrine of the immaculate conception of Mary).²⁸ As Thomas Aquinas explicitly held that the rational soul was given only after the organs of the embryo were formed, this opinion therefore attracted support from a new generation of philosophers and theologians. It is this that explains the vigorous defence of delayed animation by writers such as Mercier,²⁹ Reany,³⁰ Hering³¹ and, later, Maritain.³²

²⁴ World Medical Association Declaration of Geneva (1948); D.A. Jones, ‘The Hippocratic Oath II: Modern adaptations of the classical doctors’ oath’ *Catholic Medical Quarterly* 56.1 (2006), pp. 6-16.

²⁵ There is a clear echo of this declaration in the document of the Second Vatican Council on the Church in the Modern World: ‘Therefore from the moment of its conception life must be guarded with the greatest care while abortion and infanticide are unspeakable crimes’ (*Gaudium et Spes* 51).

²⁶ Leo XIII *On the Restoration of Christian Philosophy (Aeterni Patris)*, 4 August 1879, paragraph 31.

²⁷ *Codex Iuris Canonici* (1917), Can. 1366. § 2. Note also the irony that the same Code that recommended study of Thomas (a defender of delayed animation) also included an excommunication of abortion without reference to the time of animation *Codex Iuris Canonici* (1917), Can. 2350.

²⁸ Thomas Aquinas *Summa Theologiae* III, q. 27, a. 2 ad 2, note however that the understanding of the immaculate conception, on which the opinion of Thomas is no longer compatible with Catholic dogma, is not unrelated to the question of the timing of animation, see *Summa Theologiae* III, q. 27, a. 2, corpus. Note also the irony that the same Code that recommended study of Thomas also included an excommunication for abortion without reference to the time of animation *Codex Iuris Canonici* (1917), Can. 2350.

²⁹ D.J. Mercier, *Psychologie* (11 edn) (Paris, 1885).

³⁰ W. Reany, *The Creation of the Human Soul* (New York: Benziger Brothers, 1932).

The second factor to revive interest in delayed animation was the influence of evolutionary biology. In the 19th century Ernst Haeckel had applied ideas of evolution to the embryo. His slogan was 'ontogeny recapitulates phylogeny', that is, the stages of development of the embryo repeat the stages of evolution (from simple organism, to fish, to amphibian, to simple mammal, to primate etc.).³³ Haeckel's ideas have long since been abandoned by scientists, but the suggestion that there is some parallel between the development of the human species and the development of an individual human being has remained a powerful idea among philosophers and theologians. In both the species and the individual there is an apparent movement from simplicity to complexity. This has seemed to some to imply that humanness is not present from the beginning but is something that emerges at a certain critical point in the upward movement of complexity.

The relationship of theology and evolution was discussed by a number of thinkers in the Catholic and Reformed traditions in the 19th and 20th centuries, but the topic became more prominent among Catholic scholars from the middle of the 20th century. The writer most strongly associated with a synthesis of Catholic theology and evolutionary biology was the Jesuit theologian and palaeontologist Teilhard de Chardin. Although he wrote from the 1920s until his death in 1955, most of his works were not published at the time due to their controversial nature. It was only in the period after his death that de Chardin's influence was felt in Catholic theology, both directly through his published works,³⁴ and through the writings of confreres such as Karl Rahner.³⁵

Support for delayed animation seems to have increased in the period between 1960 and 1970 as is evident from the shift of opinion of the moral theologian Barnard Häring. In 1963 he opined that, 'the antiquated opinion of Aristotle [on delayed animation] is at best only slightly probable. To my mind it is utterly untenable at least on the practical moral level.'³⁶ However the translator added a note in 1967 stating that 'Some modern theologians and philosophers still hold that the soul is created (and infused) sometime after the fertilization of the ovum by the male sperm'³⁷ and quoting

³¹ H.M. Hering, 'De tempore animationis foetus humani', *Angelicum* 28 (1951), pp. 18-29. Not to be confused with Bernard Häring.

³² J. Maritain, *Untrammelled Approaches*, B. Doering (trans.) (Notre Dame IN: Univ. of Notre Dame Press, 1997); on Maritain see J.G. Hanink, 'Jacques Maritain and the Embryo: A Master's Muddles', in J.W. Koterski (ed) *Life and Learning XVIII*, (Washington D.C.: University Faculty for Life, 2008), pp. 249-262.

³³ For an excellent historical overview of this topic see S.J. Gould, *Ontogeny and Phylogeny* (Cambridge, MS: The Belknap Press of Harvard University Press, 1977).

³⁴ Especially T. de Chardin *The Phenomenon of Man* (New York: Harper, 1959), see also H. de Lubac *Teilhard Explained* (Paulist Press, 1968). There is an extensive literature on de Chardin who remains a controversial figure in Catholic theology and something of a lightning-rod for popular science writers, being the subject of ungrounded slurs as to his honesty as a scientist even by so moderate a commentator as Stephen J. Gould, see J.F. Haught *God After Darwin: A Theology of Evolution*, pp. 81-88 and p. 199, endnote 3.

³⁵ Evident, but without acknowledgement, in K. Rahner, *Hominization: The Evolutionary Origin of Man as a Theological Problem*, trans. W. T. O'Hara (Freiburg-im-Breisgau: Herder, 1965), a translation of Overhage P, Rahner K. *Das problem der hominization, questiones disputatae* 12/3. (Freiberg: Herder, 1961).

³⁶ B. Häring *The Law of Christ* Vol, III, E.G Kaiser (trans.) (Cork, Ireland: Mercier Press, 1967), p. 206.

³⁷ Häring *Law of Christ*, p. 206, translator's footnote.

with approval Richard McCormick (from 1965), 'The theory of retarded or delayed animation is unquestionably a tenable and respectable theory'.³⁸ By 1972 Häring had come to the view that, 'the theory which presents hominization as dependent on the development of the cerebral cortex has its own probability'.³⁹

It should be noted, nevertheless, that while McCormick in 1965 and Häring in 1972 defended the reasonableness of delayed animation, both continued to defend the prohibition of abortion as the proper moral course. Indeed while the influence of the Thomist revival and, later, the influence of evolutionary ideas, sustained belief in delayed animation among Catholic theologians before 1950 and well into the 1960s, this was not invoked in this period as an argument in favour of tolerating of early abortion. There was a very strong consensus at this time that, even if animation were later than conception, the deliberate destruction of the embryo would be an act akin to murder, a kind of 'anticipated homicide'.⁴⁰ The same attitude is found among Reformed theologians of the period. Thus Dietrich Bonhoeffer argues that 'to raise the question whether we are here concerned already with a human being or not is merely to confuse the issue. The simple fact is that God certainly intended to create a human being and that this nascent human being has been deliberately deprived of his life. And that is nothing but murder'.⁴¹

A new argument emerges

Belief in delayed animation does not necessarily imply support for the moral or legal acceptability of abortion; in fact, Aquinas himself writes of abortion prior to animation that 'after the sin of murder, whereby a human nature already in actual existence is destroyed, this sort of sin seems to hold the second place'.⁴² Thus, the history of DAAA is not co-extensive with the history of delayed animation, neither in its early 20th century form nor in its earlier medieval or patristic forms. DAAA is a new argument that did not emerge until there had been a shift in social attitudes so that toleration or promotion of abortion came to be regarded as something morally or politically attractive. In the late 19th and early 20th century most feminists and social reformers viewed illegal abortion as a social evil that was harmful for women, but they did not advocate legalised abortion as the solution to this evil.⁴³ However, in the 1920s and 1930s initially within the context of the eugenics and birth control movements, legal abortion came to be re-interpreted as a means to alleviate the suffering of women as well as being a part of the solution to other alleged social problems (of overpopulation and of 'racial hygiene').⁴⁴

³⁸ R. McCormick, 'A Human Stand on Abortion', *America* 112 (1965), 877-81.

³⁹ B. Häring *Medical Ethics* (Slough, UK: St Paul Publications, 1972), p. 84.

⁴⁰ Reany *Creation of the Human Soul* p. 196.

⁴¹ D. Bonhoeffer, *Ethics*, trans. Neville Horton Smith (New York: Macmillan Bonhoeffer, 1955), p. 131.

⁴² *Summa contra gentiles* III, q. 122, see also *Commentary on the sentences* IV, d. 31, q. 4.

⁴³ M.K. Derr, R. MacNair, and L. Naranjo-Huebl *ProLife Feminism: Yesterday & Today* 2nd edition. (Philadelphia, PA: Feminism & Nonviolence Studies Association, 2005). While this is a contested history in relation to its implications in a contemporary context, there is general agreement that 18th and 19th century predecessors of contemporary feminism were opposed to the practice of abortion.

⁴⁴ A. Farmer *Prophets and Priests: The Hidden Face of the Birth Control Movement* (London: The Saint Austin Press, 2002).

The founding of the Abortion Law Reform Association in the United Kingdom in 1936 and the Bourne judgement of 1938 were expressions of this new attitude. The abortion law reform movement was complex and encompassed more than one agenda, but from it emerged what was to be an enormously powerful idea in 20th century gender politics - that access to 'safe abortion' should be seen as a constituent element of women's emancipation. By the 1950s within a number of countries the advocacy of legal abortion had become part of a larger liberalising social agenda (affecting attitudes to contraception, homosexuality, and divorce as well as a hotchpotch of other issues).⁴⁵

It is this cultural shift, which was gathering pace in the 1950s and 1960s that provides the context that explains the emergence of the DAAA. Scholars who understood themselves as 'liberal'⁴⁶ and who regarded the new social agenda as fundamentally positive, turned to Augustine, Aquinas, and the idea of delayed animation in search of historical precedent for a more permissive approach to abortion. This same appeal occurred independently a number of times within different intellectual contexts, which in turn led to the emergence of subtly distinct forms of DAAA. These could no doubt be categorised in various ways but here are divided between secular expressions of the argument, Anglican expressions of the argument, and Catholic expressions of the argument.

Secular expressions of the argument

In secular bioethics

Perhaps the first proponent of a form of DAAA was Joseph Fletcher in 1954 in his ground-breaking work *Morals and Medicine*.⁴⁷ This book is sometimes regarded as the first example of modern bioethics. Fletcher was at that time an Episcopalian but the logic of this approach was essentially humanist, and over time he came to regard himself and his approach as secular humanist. Fletcher invoked the history of belief in delayed animation in the Catholic tradition as a way to undermine the credibility of contemporary Catholic teaching. He did not take the concept of delayed animation itself to be illuminating or authoritative. Rather, by drawing attention to an apparent change in Catholic teaching, Fletcher charged the Church with inconsistency and effectively weakened the authority both of the present and of the past teaching.

Fletcher's own view, developed over a number of books, was that humanness required the ability to exercise of higher human capacities such as thought and deliberation. Hence he did not regard a child as human until several months after the child was born, and he opened the door not only abortion but also to infanticide. Fletcher's ideas were taken up by a later generation of secular bioethicists including Michael Tooley,⁴⁸ John Harris⁴⁹ and Peter Singer.⁵⁰ Nevertheless, Peter Singer

⁴⁵ This is not to defend the labels of liberal and conservative in relation to social issues, but only to describe a frame within which these issues came to be discussed or understood during and since the 1960s.

⁴⁶ For examples of the self-description of 'liberal' in relation to abortion see, for example, J. Donceel, 'A Liberal Catholic View', in R. Hall (ed) *Abortion in a Changing World* (New York: Columbia UP, 1970); Dombrowski and Deltete, *A brief liberal Catholic defense of abortion*; W. McLennan, 'Breath is life: Defending abortion from a liberal Christian perspective', *UU World* Winter 11.1.09.

⁴⁷ J. Fletcher *Morals and Medicine* (Princeton, N.J., Princeton University Press, 1954).

⁴⁸ M. Tooley, *Abortion and infanticide* (Oxford: Oxford University Press, 1983).

has defended the Catholic Church against the charge of inconsistency in this regard. The Church's change of mind on delayed animation occurred not because of abandoning ethical or philosophical principles but because these principles were now informed by a new biology:

'But the reason for the church's change of view on the stage of pregnancy at which abortion becomes the killing of a human being was surely, within the terms of its own view of the sanctity of human life, a sound one. Once modern biology had shown the actual nature of early human development, the church had little choice but to abandon its support for the unscientific Aristotelian embryology of Thomas Aquinas. (Liberal Catholics will hardly want to condemn one of the few instances in which the church has been willing to modify its views in the light of new scientific knowledge)⁵¹

The use of DAAA by Fletcher and by other secular bioethicists obscures the more fundamental difference of this approach to bioethics from the Catholic ethical tradition, that is, the question of whether the life of every human being is morally inviolable. Singer is perceptive in acknowledging the logic of the Catholic ethical tradition given its fundamental principles and hence the weakness of this particular form of DAAA.

In legal contexts

Another early context for the emergence of DAAA was among lawyers, beginning in 1957 with Glanville Williams, then reader in law at Cambridge University. In his book *The Sanctity of Life and the Criminal Law*⁵² he invoked delayed animation as an example of the alleged inconsistency of contemporary Catholic theological accounts of the beginning of life with earlier Catholic beliefs (a form of DAAA which echoes that of Fletcher, whom he had read).⁵³ However Williams also introduces another form of the argument which implicitly appeals to the tradition of delayed animation not as a *reductio ad absurdum* but as a precedent, in that, according to Williams, the common law had tolerated abortion prior to 'quickening'.

His book is not a systematic work of legal philosophy and at times the purported logic of the argument is obscure, but the argument seems to be that the distinction of early and later abortion, which was once held for theological reasons, may still be followed but for a different reason. This reason, according to Williams is the 'humane, ethical, and parental feeling of the plain man [that] leads him to wish to extend the protection of the criminal law not only to the newly born child but to

⁴⁹ J. Harris, 'Book Review: Abortion and Infanticide', *Journal of Medical Ethics* 11 (1985), p. 212; J. Harris, 'Euthanasia and the Value of Life' in J. Keown *Euthanasia Examined* (Cambridge: Cambridge University Press, 1995).

⁵⁰ P. Singer, *Practical Ethics*, 2d ed. (Cambridge: Cambridge University Press, 1993).

⁵¹ P. Singer, *Rethinking life and death: The Collapse of Our Traditional Values* (Oxford: Oxford University Press, 1995) p. 87.

⁵² Glanville Williams, *The Sanctity of Life and the Criminal Law* (New York: Alfred A Knopf, 1957).

⁵³ Williams describes Fletcher as 'a Liberal Protestant' and says of his work, 'the Christian humanist approach of this book is at the opposite pole from that of dogmatic and authoritarian religion', Williams, *Sanctity of Life* p. 131.

the viable child before birth'.⁵⁴ However, this appeal to feeling is a weak argument, for the feelings of the 'plain man' have varied over time and between different cultures. Furthermore it is disingenuous for Williams to appeal to cultural abhorrence of infanticide when he himself attributes this attitude among modern secular people to the 'legacy of their religious heritage'.⁵⁵ In contrast, Williams' own view is that the killing of 'a viable monster or an idiot child' by his or her mother 'exactly paralleled by the bitch that kills her mis-shaped puppies, cannot confidently be pronounced immoral'.⁵⁶

While Glanville Williams was not clear or consistent in his use of DAAA, his argument was taken up by others, most notably Eugene Quay and Cyril Means⁵⁷ who construed the quickening distinction as defining a 'common law liberty to abortion'. Such is the value of precedence within a legal context that jurists who wished to liberalise the abortion law openly appealed to this distinction despite its acknowledged religious provenance.

The most politically significant effect of this form of DAAA was in helping to shape the United States Supreme Court judgement *Roe v Wade* [1973] which declared unconstitutional all existing statutes restricting first and second-trimester abortion. Justice Blackmun in his opinion cited Williams, Quay, and Means and was unafraid himself to venture into theology, stating for example, that 'The theological debate was reflected in the writings of St. Augustine, who made a distinction between embryo *inanimatus*, not yet endowed with a soul, and embryo *animatus*. He may have drawn upon Exodus 21:22.'⁵⁸

In contrast to the invoking of delayed animation by Fletcher, which was purely to undermine the authority of Catholic beliefs, the form of DAAA developed by Glanville Williams and cited with approval in *Roe v Wade*, is effectively an attempt to appeal to the authority of the delayed-animation tradition as precedent, through its impact on the English common law. However this difference helps identify a fundamental flaw in the legal form of the argument. If 'the importance attached to quickening rests on what now appears to be a rather obvious superstition'⁵⁹ then it cannot reasonably function as a moral or legal precedent.⁶⁰

⁵⁴ Williams, *Sanctity of Life*, p. 230.

⁵⁵ Williams, *Sanctity of Life*, p. 19

⁵⁶ Williams, *Sanctity of Life*, pp. 19-20.

⁵⁷ E. Quay, 'Justifiable Abortion - Medical and Legal Foundations', *Georgetown Law Journal* 49 (winter 1960 and spring 1961), pp. 173-241, 395-443; C.C. Means, 'The Law of New York Concerning Abortion and the Status of the Fetus, 1664-1968: A Case of Cessation of Constitutionality', 14 *N.Y.L.F.* 419 (1968); C.C. Means, 'The Phoenix of Abortional Freedom: Is A Penumbra Or Ninth Amendment Right About To Arise From the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common-Law Liberty?', 17 *N.Y.L.F.* 335 (1971).

⁵⁸ *Roe v Wade*, 410 U.S. 133 (1973) Opinion of Justice Blackmun, footnote 22.

⁵⁹ Williams *Sanctity of Life* p. 230.

⁶⁰ The legal form of DAAA has no basis unless it can address the underlying question of anthropology. An account of what it would be to take the common law tradition and the quickening distinction seriously as a precedent would require analysing the anthropology that shaped it, and asking what the equivalent holds in a modern context. However, one of the few examples of just such an attempt concludes that 'the policy and logic of the common and statutory law argues for extending legal protection to human life from conception'

The form of DAAA developed by Glanville Williams and other jurists was essentially opportunistic. It was an appeal to a tradition the basis of which they did not share. It is no doubt for this reason that legal forms of DAAA are marked by poor historical⁶¹ and theological scholarship.⁶² A credible form of DAAA requires proponents who have sufficient intellectual sympathy with the Christian tradition that they can invoke this tradition as their own.⁶³ This is not generally true of secular expressions of the argument but it is true in two other contexts: among Anglican scholars; and among Roman Catholics.

Anglican expressions of the argument

Appeal to the Christian tradition

DAAA typically takes the form of appeal to Christian tradition. It is for this reason that it has not generally been prominent among most of the Churches of the Reformation, which from their foundation have been critical of appeal to tradition as a basis for Christian doctrine, and have preferred to base doctrine directly on Scripture. Liberal Protestantism has added an emphasis on contemporary experience and on Biblical criticism, but has remained critical of tradition as a source of Christian authority.⁶⁴ In contrast, the Church of England and the Churches that comprise the

M.S. Scott, 'Quickening in the Common Law: The Legal Precedent Roe Attempted and Failed to Use', 1 *Michigan Law and Policy Review* 268 (1996).

⁶¹ Dellapenna, *Dispelling the Myths*; Keown, 'Back to the future'; J. Keown and D.A. Jones, 'Surveying the Foundations of Medical Law: A Reassessment of Glanville Williams's *The Sanctity of Life and the Criminal Law*', *Medical Law Review* 16 (2008), pp. 85-126.

⁶² C.B. Daly, *Morals, Law and Life* (Dublin: Clonmore & Reynolds, 1962); Keown and Jones, 'Surveying the Foundations'. A characteristic example of the weakness of theological scholarship is found in the Roe v Wade judgement itself. Augustine's *De Origine Animae* 4.4 is cited as 'Pub.Law 44.527'. One can only surmise that someone with no knowledge of theology has, without checking the reference, expanded a citation of P.L. 44.527. This is of course a reference to *Patrologia Latina* 44.527. It might be added that the distinction ascribed to Augustine by Williams (and repeated by Blackmun) between the embryo *inanimatus* or the embryo *animatus* occurs nowhere in Augustine's voluminous writings (see Jones, 'Thomas Aquinas, Augustine and Aristotle', note 53).

⁶³ In addition to secular and Christian forms of DAAA, there are some examples of DAAA by those of another faith using Christianity as a foil for their own account, for example D. Feldman, *Marital Relations, Birth Control and Abortion in Jewish Law* (New York: Schocken Book, 1974) who takes most of his description of the Catholic tradition primarily from Fletcher *Morals and Medicine*. Such accounts have in common with secular forms of DAAA the opportunistic use of an alien tradition, and share the typically weakness of secular accounts. Because the account of the Catholic tradition is so minimal and little more than caricature, they succeed only in knocking down a straw man.

⁶⁴ As argued eloquently by John Barton in his Inaugural lecture on the future of Old Testament Study, 'Criticism in biblical scholarship, exactly like Protestantism in religion, might take as its motto St Cyprian's dictum: "custom without truth is just error in its old age"'. J. Barton *The Old Testament: Canon, Literature and Theology: Collected Essays of John Barton*, (Aldershot: Ashgate, 2007) p. 163 quoting Cyprian Letter 74 (*ad Pompeium*) §9.

Anglican Communion are more open to arguments from tradition, though of course this is more so in some strands of Anglicanism than others.⁶⁵

As a secular legal form of DAAA played a role in the United States Supreme Court decision to overturn legal restrictions on abortion, so an Anglican form played a role in the legalisation of abortion in the United Kingdom. The Abortion Act 1967 was preceded by an influential report of the Board of Social Responsibility in 1965, *Abortion: An Ethical Discussion*. This report concluded that 'in certain circumstances abortion can be justified'.⁶⁶ The listed circumstances included not only a threat to the life of the mother, but also a threat to her 'well-being' which was understood to include the 'well-being of her family'. These conclusions were reached not only by reflection on the current social situation but also 'in the light of traditional discussions', including discussion of the tradition of delayed animation. The report rejected the idea of a particular moment of ensoulment but argued nevertheless that the moral status of the embryo increased gradually *pari passu* with biological development. This moral gradualism was then read back into the traditional distinctions: 'In the old tradition the [gradualist] principle was recognized, as has been seen, in the distinction between an animate and an inanimate foetus, and between pregnancy before and after quickening'.⁶⁷

The Committee that wrote *Abortion: An Ethical Discussion* was far from reflective of all Anglicans. Nevertheless, the report was important for giving Christian endorsement to liberalisation of the law on abortion, at a time when very few countries had yet done so.

The secretary to that committee was Gordon Dunstan, a prominent Anglican moral theologian who would invoke a similar form of DAAA twenty years later in a related moral and political controversy. In 1984, he submitted a paper to the Warnock Committee which was subsequently published in the *Journal of Medical Ethics*.⁶⁸ There he argued that 'the claim to absolute protection for the human embryo "from the beginning" is a novelty in the Western, Christian and specifically Roman Catholic moral traditions'.⁶⁹ He appealed to various examples of graded status but centrally to the concept of delayed animation. Dunstan's argument was influential in the debate leading up to the passing of the Human Fertilisation and Embryology Act 1990 which permitted experimentation on human embryos. The same argument was reiterated ten years later by Archbishop Peter Carnley, Primate of the Anglican Church of Australia,⁷⁰ and by Bishop Richard Harries, Bishop of Oxford,⁷¹ in the context

⁶⁵ The Churches of the East share with Anglicans a respect for tradition, but DAAAs have not emerged in an Orthodox context in part because delayed animation is less prominent in the Eastern Christian tradition (and was opposed by Gregory of Nyssa, Basil the Great, and Maximus the Confessor) and in part because the Churches of the East have not developed modern schools of theology analogous to liberal Anglicanism.

⁶⁶ Board of Social Responsibility *Abortion: An Ethical Discussion* (London: Church Information Office, 1965), p. 61.

⁶⁷ BSR *Abortion*, p. 29.

⁶⁸ G.R. Dunstan, 'The moral status of the human embryo: a tradition recalled', *J Med Ethics* 1 (1984), pp. 38-44.

⁶⁹ Dunstan, 'Moral status of the human embryo', p. 38.

⁷⁰ P. Carnley, 'Such is Life', *The Bulletin* April 16 (2002), pp.36-38.

of a new debate over whether to permit the cloning of human embryos for research. In 2001, Bishop Harries was appointed chair of the House of Lord Select Committee on Stem Cell Research, which devoted an appendix of its report to a statement of Dunstan's argument: 'the fact that the Christian tradition, for so much of its history, made a distinction between the moral status of the unformed and the formed embryo, and thought of the human person in the full sense coming only with a delayed ensoulment, remains significant: it reflects a valid moral distinction'.⁷²

The structure of Dunstan's version of DAAA was similar to that of Glanville Williams but it was the work of independent scholarship⁷³ and included a few characteristically Anglican touches, for example in mentioning Anglo-Saxon penitentials as well as the English common law tradition, and in paying more attention to Augustine than to Aquinas. Dunstan's scholarship is far superior to that of Glanville Williams but it is open to some of the same criticisms, not least that it sought to appeal to historical precedent while bypassing the key question of whether the notion of delayed animation is valid in the context of contemporary biology. The moral tradition to which Dunstan appealed was explicitly based on a theological anthropology, itself derived from philosophical reflection on ancient biology. That biology is antiquated, and to attempt an argument from precedent in the absence of a contemporary philosophical anthropology is to build a house on sand. It is an argument without rational foundation.⁷⁴

Appeal to evolutionary biology

Bishop Ian Ramsey, who chaired the 1965 Board of Social Responsibility committee, was noted both for speaking on ethical and social questions, and for his interest in the relationship between science and religion. This alerts us to another form of DAAA to develop within the Anglican tradition. While

⁷¹ Hansard Vol.621, No.16, col.35-37; See R. Harries, 'Delivering Public Policy: The Status of the Embryo and Tissue Typing', *Studies in Christian Ethics* 18 (2005), pp. 57-74; R. Harries, 'The Beginning Of Life', *Ecclesiastical Law Journal* 5 (2000), pp. 396-407.

⁷² House of Lords *Report from the Select Committee of the House of Lords, Stem Cell Research*, (London: Her Majesty's Stationery Office, 2002), Appendix 4: The moral status of the early embryo: reading the Christian tradition.

⁷³ Glanville Williams, in addition to Fletcher *Morals and Medicine*, took his primary sources from Reany *The Creation of the Human Soul* and R.J. Huser *The Crime of Abortion in Canon Law* (The Catholic University of America, Canon Law Studies No. 162: Washington D.C., 1942). In contrast Dunstan used as his main secondary sources A. Chollet, 'Animation', in: A. Vacant and E. Mangenot (eds.) *Dictionnaire de theologie Catholique* (Paris: Latouzey et Ane, 1903) and J. Delmaille, 'Avortement', in Naz R, ed. *Dictionnaire de droit canonique* (Paris: Latouzey et Ane, 1938) in addition to which he also engaged with primary sources that he discovered independently. It should be noted that none of these earlier Catholic writers (Chollet, Delmaille, Reany or Huser) invoke delayed animation as a reason to tolerate abortion.

⁷⁴ Dunstan's DAAA also embodies the *non sequitur* with which this paper started, the supposition that delayed animation would imply that the human embryo should be available for experimental purposes, despite the fact that the Christian tradition itself never sanctioned the deliberate destruction of human life, see D.A. Jones, 'The human embryo in the Christian tradition: a reconsideration' *Journal of Medical Ethics* 31. 12 (December 2005), pp. 710-714; D.A. Jones, 'A Theologians' Brief On the place of the human embryo within the Christian tradition and the theological principles for evaluating its moral status', *Ethics and Medicine* 17.3, (Fall 2001), pp. 143-153.

Dunstan's argument gained significant attention during the debates over embryo experimentation, arguably the most prominent Anglican voice in support of such experimentation was that of Archbishop John Habgood. His academic background was not in history or moral theology but in biology. As noted above, one of the factors that maintained support for delayed animation (or analogous concepts) during the twentieth century was theological reflection on the theory of evolution. This was certainly true of Habgood whom Mary Warnock described as a 'Darwinian gradualist': "'Christianity", he said, "no more requires us to believe that human life begins at a certain moment than it requires belief in the Garden of Eden."'"⁷⁵

Habgood's version of DAAA in favour of experimentation on human embryos is representative of many Anglicans who have written on the relationship of science and religion. A similar view is taken John Polkinghorne,⁷⁶ Donald Mackay,⁷⁷ and several others.⁷⁸ A typical move of these thinkers is to view consciousness and other distinctively human functions as emergent properties of complex hierarchical systems. This frame is then applied both to evolution and to embryonic development. In each case life is not regarded as specifically human life until it has reached a certain level of biological complexity. From this anthropological claim, the moral conclusion is then drawn that early human embryos, not having full human status, can be used, created, and destroyed for the benefit of those who are fully human, that is, those who have been born.

This form of DAAA, unlike that of Dunstan, is rooted in anthropology and in a broader understanding of the relationship of science and religion and is thus a much more serious argument. Nevertheless, it relies on a parallel between evolution and developmental biology which is questionable both in relation to biology and in relation to philosophy. Biologically, development is clearly distinct from evolution in that the process is strongly teleological, moving towards a determinate end point. The embryo is already a radically complex system as is evident from the active process of development in which it is engaged. It seems *prima facie* that to regard the human embryo as though it were morally equivalent to a nonhuman organism is a mistake. However, to resolve the issue would require careful philosophical analysis and it is here that many writers on science and religion tend to be weakest. Many are ordained scientists who have come directly from natural science to theology without higher studies in philosophy.

The form of DAAA propounded by Habgood and others raises important questions of how to relate theological anthropology to modern biology. Nevertheless, without a more robust philosophical analysis of the issues, the argument remains at the level of suggestive parallels rather than of rigorous demonstration. This gap could perhaps be bridged through a greater engagement with Catholics writing on science and religion, in particular those in the Thomist tradition, which draws heavily both on theological and on philosophical modes of thought.⁷⁹ This leads us to consider the

⁷⁵ M. Warnock, 'The Bioethics of Reproduction: Have the problems changed?' in S. Sweeny and I. Hodder (eds.) *The Body* (Cambridge: Cambridge University Press, 2002), p. 44.

⁷⁶ J. Polkinghorne, 'The person, the soul, and genetic engineering', *J Med Ethics* 30 (2004), pp. 593–7.

⁷⁷ D. Mackay, 'The Beginnings of Personal Life', *In the Service of Medicine* 30.2, (1984), pp. 9-13; D. Mackay, *Human Science and Human Dignity* (Hodder & Stoughton, 1979), pp. 64-5 and 98-102.

⁷⁸ For example, John Bryant, see J. Bryant and J. Searle, *Life in Our Hands: A Christian Perspective on Genetics and Cloning* (Leicester: IVP, 2004).

⁷⁹ For examples of Thomists engaging seriously with modern biology, though coming to different views see N. Ford *When Did I begin? Conception of the Human Individual in History, Philosophy and Science* (Cambridge:

expression of DAAA with a Catholic context. However, before examining Catholic forms of DAAA it is important to acknowledge the diversity of theological views within put the Anglican tradition.

Diversity within the Anglican tradition

The arguments put forward by figures such as Ramsey, Habgood, Harries, Polkinghorne and Harries proved influential in part because they were useful to a succession of governments who wished to have ecclesial endorsement of ethically controversial proposals. However, it should not be thought that this approach represents the only, or the official, or even the predominant Anglican understanding of the human embryo. When the Abortion Act 1967 finally came to a vote in the House of Lords, Bishop Ian Ramsey, who had been the chair of the Board of Social Responsibility committee, was the only Anglican bishop to vote in favour of the social clause. Similarly, in February 1985, the General Synod rejected the gradualist position set out by the Board in its response to the Warnock Committee.⁸⁰

Subsequent to this vote, the Board published a very balanced report *Personal Origins* (1985), which set out two views, one which, 'takes its point of reference in *the continuity of the individual subject*'⁸¹ and the other which, 'argues that there are attributes which must be possessed by a developing embryo before it can be called a person'.⁸² The committee came to recognise 'in both these approaches the possibility of a scientifically judicious and theologically responsible set of convictions'.⁸³ Only in the context of endorsing this more balanced report did the Synod accept the value of the Warnock Report recommendation for a regulatory body to 'continue the debate on the moral aspects of technologies concerned with human embryology and fertilisation'.⁸⁴

The 1985 Report *Personal Origins* represents a significant achievement in recognising two strands of theology within the Anglican tradition.⁸⁵ More frequently the Board of Social Responsibility (and its success department) has reflected only the gradualist view and has failed to acknowledge the seriousness of views present in *Personal Origins* and in votes of the Synod. For example, in 2007 the Mission and Public Affairs Council wrote that 'we do not regard the preimplantation embryo as yet

Cambridge University Press, 1988); W. Wallace, 'Aquinas's Legacy on Individuation, Cogitation and Hominization', in D. Gallagher (ed) *Thomas Aquinas and His Legacy* (Washington, DC.: Catholic University of America Press, 1994); and N. Austriaco. 'Immediate Hominization from the Systems Perspective', *National Catholic Bioethics Quarterly* 4.4, (Winter 2004), pp. 719 – 738. Ford's views are discussed further below.

⁸⁰ P.J. O'Mahony *A Question of life: Its beginning and transmission* (London: Sheed and Ward, 1990), pp. 115-116. See also T. Banchoff *Embryo Politics: Ethics and Policy in Atlantic Democracies* (Ithaca: Cornell University Press, 2011), p. 40 and for a later Synod debate p. 143.

⁸¹ Board of Social Responsibility *Personal origins: The Report of a Working Party on Human Fertilisation and Embryology of the Board of Social Responsibility* (London: CIO publishing, 1985), paragraph 87, emphasis in the original.

⁸² BSR *Personal origins*, paragraph 88.

⁸³ BSR *Personal origins*, paragraph 90.

⁸⁴ General Synod Resolution of July 1985.

⁸⁵ The second revised edition was published in 1996 but this kept the recognition of two strands of Anglican theological reflection on the human embryo.

having the same status of a person *made in the image of God*'.⁸⁶ This may be contrasted with the resolution of the General Synod of 1983 (reiterated in 1988) 'that all human life, including life developing in the womb, *is created by God in his own image* and is therefore to be nurtured, supported and protected'.⁸⁷ It should also be noted that in 2001 Archbishop Rowan Williams was among a number of Anglican theologians to sign an ecumenical statement declaring that 'Though penalties have varied, the Christian tradition has always extended the principle of the sacredness of human life to the very beginning of each human being, and never allowed the deliberate destruction of the fruit of conception'.⁸⁸

Catholic expressions of the argument

Appeal to Catholic tradition

It was in the 1960s that some Catholic scholars began to suggest that delayed animation might render abortion or embryo destruction morally acceptable, given sufficiently grave circumstances.⁸⁹ By the end of that decade there were, for the first time, clear examples of DAAA within the Catholic tradition. One of the leading proponents was the Jesuit Joseph Donceel in a series of articles, the most significant appearing in *Theological Studies* in 1970 under the title, 'Immediate Animation and Delayed Hominization'.⁹⁰ The Catholic moral theologian Lisa Sowle Cahill refers to this as 'one of the first proposed revivals of delayed hominization'.⁹¹ Much of Donceel's article is devoted to an account

⁸⁶ Joint Committee on the Human Tissue and Embryos (Draft) Bill - Written Evidence, *Memorandum by the Church of England's Mission and Public Affairs Council* (Ev 68), emphasis added.

⁸⁷ General Synod Resolution of July 1983, emphasis added.

⁸⁸ Jones, 'A Theologians' Brief'. Banchoff *Embryo Politics*, p. 144. For a more thorough going theological critique of the gradualist position from Anglican perspective see O. O'Donovan *Begotten or Made?* (Oxford: Clarendon Press, 1984) or M. Banner, 'Christian anthropology at the beginning and end of life', in M. Banner *Christian Ethics and Contemporary Moral Problems* (Cambridge: Cambridge University Press, 1999).

⁸⁹ C. Curran, 'Abortion: Its Legal and Moral Aspects in Catholic Theology', in C. Curran *New Perspectives in Moral Theology* (Doubleday, IN: Fides Publishers inc, 1974) gives a useful overview of the state of debate at that time. He begins by claiming that 'Until a few years ago there was no debate within Catholicism on the question of abortion' (p. 179) and the earliest example he gives of a Catholic theologian seriously questioning the received tradition is J. Donceel, 'Abortion: Mediate v. Immediate Animation', *Continuum* 5 (Spring 1967), pp. 167-71. One year earlier than this is Karl Rahner who in his essay originally published in German in 1966 states that 'Of course it does not follow from the fact of such uncertainty [regarding the time of animation] that experiments with fertilised embryonic material are equivalent to morally indifferent experiments with mere 'things'. But it would be conceivable that, given a serious positive doubt about the human quality of the experimental material, the reasons in favour of experimenting might carry more weight, considered rationally, than the uncertain rights of a human being whose very existence is in doubt.' K. Rahner, 'The problem of genetic manipulation' in K. Rahner *Theological Investigations Vol 9*, (London: Darton, Longman and Todd, 1972), p. 236. There may be earlier examples but the debate does not become prominent until the end of that decade.

⁹⁰ J. Donceel, 'Immediate Animation and Delayed Hominization', *Theological Studies*, 31.1, (1970), pp. 76-105; see also Donceel, 'Abortion: Mediate v. Immediate Animation', and Donceel, 'A Liberal Catholic View'.

⁹¹ L.S. Cahill, 'The Embryo and the Fetus: New Moral Contexts', *Theological Studies* 54 (1993), p. 135.

of the Catholic tradition aiming to show by diverse examples that it provides strong precedent for belief in delayed animation.⁹² The article then concludes with a quotation from the Board of Social Responsibility report *Abortion: An Ethical Discussion*, invoking ecumenical considerations as a way to introduce the moral claim that delayed animation supports a more permissive attitude to abortion, 'Might it [embryonic life prior to hominization] not be terminated occasionally for *very grave reasons*, the reasons which other Christian churches consider sufficient?'⁹³

Donceel's articulation of a Catholic form of DAAA was followed by a number of other scholars including Charles Curran,⁹⁴ Carol Tauer,⁹⁵ Daniel Maguire⁹⁶ and Daniel Dombrowski.⁹⁷ Though there are differences in approach and style between these authors (Curran, for example, being more restrained in his conclusions, Maguire more overtly polemical) they have in common a form of DAAA that is an appeal to the Roman Catholic tradition by writers who situate themselves within that tradition. These authors also have in common the use of the conceptual framework of *probabilism*. This is an approach to moral theology that was developed by Catholic writers in the early modern period and which continued to structure moral theological debate well into the 19th century. Probabilism was the doctrine that it is lawful for a Catholic to follow a 'probable' opinion (that is, one based on the reasonable arguments of trustworthy authorities) even if the opposite view appears to be more probable. Curran, Tauer and others argued that, using this approach, the fact that many reputable theologians (such as Augustine and Thomas Aquinas and, more recently, Karl Rahner and Bernard Häring) had supported delayed animation made this opinion 'probable'. This in turn, they argued, permitted Catholics in good conscience to act on the view that early abortion was not homicide and that in some circumstances it could be tolerated.

Of all forms of DAAA by appeal to precedent, this form is the most sophisticated, far more so than that of Williams or even that of Dunstan. The historical scholarship especially of Charles Curran is careful and detailed and he has clear intellectual sympathy with the tradition to which he appeals, especially in relation to 17th-century probabilists. However, even this Catholic form of DAAA faces a

⁹² Donceel's account of the tradition relies heavily on Challot 'Animation', Hering 'De tempore animationis' and H. de Dorlodot, 'A Vindication of the Mediate Animation Theory', in E. C. Messenger (ed) *Theology and Evolution* (London: Sands and Co, 1949), none of whom, it should be emphasised, advocated DAAA.

⁹³ Donceel, 'Immediate Animation', p. 105, emphasis in the original, though it should be noted that the other Christian churches that Donceel has in mind are represented by *Abortion: An Ethical Discussion*, which Donceel quotes with approval. That report considered abortion to be justified not only by a threat to life, nor only by a threat to life or health, but even by a threat to the 'well-being' of the woman *or of her family*, and the chair of that committee, bishop Ian Ramsey, subsequently voted for Abortion Act 1967 which effectively permitted elective abortion in England, Wales and Scotland (as would have been evident in 1970 when Donceel was writing). This is not what is immediately suggested by the phrase '*very grave reasons*'.

⁹⁴ Curran, 'Abortion'.

⁹⁵ C. Tauer, 'The Tradition of Probabilism and the Moral Status of the Early Embryo', *Theological Studies*, 45, 1984.

⁹⁶ D.C. Maguire, 'A Question of Catholic Honesty', *Christian Century*, September 14-21, (1983-84), pp. 803-807. D.C. Maguire *Sacred Choices: The Right to Contraception and Abortion in Ten World Religions* (Minneapolis: Fortress Press, 2001).

⁹⁷ Dombrowski and Deltete, *A brief liberal Catholic defense of abortion*.

number of significant problems. In the first place, if the opposite opinion – that ensoulment occurs at fertilisation – is acknowledged also to be probable (being based on the reasonable arguments of other trustworthy authorities) then what is at stake in choosing between these two opinions is not only liberty of conscience but also the danger of killing what may well be an ensouled human being. This was the conclusion reached by Häring in 1963, ‘every mortal attack upon a life which is at least probably an actual human life manifests the spirit and disposition of a murderer’⁹⁸ for, as Grisez would later argue, ‘to be willing to kill what for all one knows is a person is to be willing to kill a person’.⁹⁹

Furthermore, while the Catholic tradition provides precedent for believing in delayed animation, it provides very little precedent for permitting abortion prior to the purported moment of animation. Modern advocates of DAAA appeal to Augustine and Thomas Aquinas, but neither Augustine nor Thomas Aquinas advocated tolerance of abortion. If precedent is to be found for DAAA, this cannot be found in the tradition in general. At most it could be argued there is some precedent for DAAA among some Catholic moral theologians in the 17th century. However, these ‘laxist’ views were highly controversial at the time, and the clearest examples of early DAAAs were condemned by the Holy Office in 1679.¹⁰⁰

The condemnations of laxism points to another problem with the appeal to probabilism, in that the framework of probabilism, in its original historical context, presupposed acceptance of the authority of Rome to set limits on legitimate opinion. To advocate the permissibility of direct abortion requires moving beyond the tradition of probabilism into what may be called a ‘theology of dissent’. As I have written elsewhere, ‘A famous laxist principle of the seventeenth century was that it was legitimate to follow any position that was defended by a theologian and that had not yet been condemned by the church. However, even the laxists agreed that an opinion could not be held to be probable if it had been explicitly condemned by Rome.’¹⁰¹

In response to Catholic forms of DAAA there have been a number of attempts by theologians to present a grand narrative of the tradition to showing that it consistently respects the life of the embryo at every stage of development.¹⁰² Nevertheless, despite the fundamental weakness of DAAA

⁹⁸ Häring, *The Law of Christ Vol, III*, p. 206

⁹⁹ G. Grisez, *The Way of the Lord Jesus. II: Living a Christian Life* (Quincy, IL: Franciscan Press, 1993), p. 497, also used as the title of an article by R. Song, ‘To Be Willing to Kill What for All One Knows Is A Person Is to Be Willing to Kill a Person’, in *God and the Embryo: Religious Voices on Stem Cells and Cloning*, ed. B. Waters and R. Cole-Turner (Georgetown University Press, Washington, DC, 2003), pp. 98-107.

¹⁰⁰ For example: that abortion before animation could be justified if a woman’s life was threatened due to scandal; or that uncertainty about the time of ensoulment could be such that no abortion involved homicide. See Decree of the Holy Office, 4 March 1679, n. 34-35, in Denzinger, H. & Rahner, K. (Eds) (1953) *Enchiridion Symbolorum* (Friburg: Herder), p. 371.

¹⁰¹ Jones, *The Soul of the Embryo*, p. 191; See also M. Johnson, ‘Delayed Hominization: Reflections on Some Recent Catholic Claims for delayed Hominization’, *Theological Studies* 56 (1995), pp. 743-763, p. 744, n. 4; J.J. Farraher, ‘Abortion and Probabilism’ in S.J. Heaney *Abortion: A New Generation of Catholic Responses* (Braintree, MA: The Pope John Centre, 1992).

¹⁰² G. Grisez, *Abortion: the Myths the Realities and the Arguments* (New York: Corpus Books, 1970); J.T. Noonan, ‘An Almost Absolute Value in History’, in J.T. Noonan (ed) *The Morality of Abortion: Legal and*

by appeal to precedent, this form of argument has been very successful in gaining a following among Catholics who dissent from the Church's moral teaching, both in scholarly contexts and more popular contexts.

The transition from scholarly to popular contexts has been facilitated by abortion advocacy organisations such as Catholics for a Free Choice. Among their most popular publications is a short booklet length by Jane Hurst entitled *The History of Abortion in the Catholic Church: The untold story*.¹⁰³ This has gone through several reprints and is frequently quoted. The same theme has also been picked up by writers who are alienated from the Church on a broader range of issues, of whom Uta Ranke-Heinemann¹⁰⁴ and Peter de Rosa¹⁰⁵ are good examples. Quotations and paraphrases of such authors and of academic activists such as Daniel Maguire and Daniel Dombrowski have been disseminated by magazine articles, pamphlets and, by that most viral of media, the internet. From these sources the argument has become especially popular in anti-religious or anti-clerical blogs and websites. These most popular expressions of DAAA commonly revert to the form it first had in the work of Joseph Fletcher, not a serious or sympathetic attempt to engage with the Catholic tradition, but an attempted *reductio ad absurdum* with the simple aim of showing the inconsistency of the Catholic tradition and hence undermining its authority. However, as argued above in relation to secular uses of the argument, such exercises in knocking down straw men serve only to obscure deeper differences between modern secular humanism and the Christian tradition in relation to the principle of the inviolability of human life. If the principle of the inviolability of human life is accepted, it is hard to show the Catholic tradition has been inconsistent.

These reflections expose an underlying weakness in all forms of DAAA by appeal to precedent, for there is no precedent in the Christian tradition for the conclusion that abortion should be tolerated or advocated before animation, and furthermore, the fact that earlier thinkers reliant on ancient biology believed that animation occurred after the embryo was formed is not enough to show that it is reasonable to do so in the present day. To achieve its aim DAAA would have to show both (in relation to philosophical anthropology) that delayed animation, or some analogous idea, was credible in a contemporary context, and further, (in relation to ethics) that this implies the moral acceptability of early abortion. Rising to this challenge, a number of contemporary thinkers within the Catholic tradition have propounded anthropological forms of DAAA, primarily invoking the philosophical and moral principles of Thomas Aquinas. Such attempts fall roughly into two categories, those that appeal to brain-related criteria and those that are concerned with individuation.¹⁰⁶

Historical Perspectives (Cambridge Mass.: Harvard University Press); Connery, *Abortion*; Jones, *Soul of the Embryo*.

¹⁰³ J. Hurst, *The History of Abortion in the Catholic Church: The untold story* (Washington, DC: Catholics for A Free Choice, 1989).

¹⁰⁴ U. Ranke-Heinemann, *Eunuchs for the Kingdom of Heaven: Women, Sexuality and the Catholic Church*, (New York: Doubleday, 1990).

¹⁰⁵ P. de Rosa, *Vicars of Christ: The Dark Side of the Papacy* (Dublin, Ireland: Poolbeg Press, 1988).

¹⁰⁶ Curran delineates a further argument among Catholic advocates of abortion, that the moral status of the embryo is not inherent but is conferred by the mother or by community. He cites Bernard Quelquejeu OP, Jacques Pohier OP and Louis Beirnaert SJ as examples (Curran, 'Abortion' pp. 180-185). However this relational approach does not appeal to the tradition of delayed animation and so is not considered in the present paper.

Brain-related accounts of animation

Donceel is significant not only for introducing into Catholic discussion a form of DAAA by appeal to precedent, but also for articulating a defense of a form of delayed animation based on Thomist principles. Donceel not only appealed to the tradition, he also argued that delayed animation was implied by Thomistic philosophical principles if these were applied to contemporary biology. He preferred the term 'delayed hominization' to delayed animation, in part because Thomas held that the embryo was animated with a soul from conception, but not a specifically human soul. Donceel took the term hominization from Karl Rahner who himself took it from Teilhard de Chardin.¹⁰⁷ The use of the term by de Chardin and Rahner draws on the analogy between individual development and the evolution of the human species, the same analogy invoked by Habgood and among Anglican writers on science and religion. Nevertheless, while Donceel regarded evolution as making delayed hominization 'more probable',¹⁰⁸ this analogy is secondary to his key argument, which is that delayed hominization is implied by a Thomistic, hylomorphic conception of man.

'If form and matter are strictly complementary, as hylomorphism holds, there can be an actual human soul only in a body endowed with the organs required for the spiritual activities of man.'¹⁰⁹

Other philosophers who have followed Donceel and who have also appeal explicitly and in detail to Thomas are Michael Coughlan,¹¹⁰ Jean Porter,¹¹¹ Dombrowski and Deltete¹¹², and Pasnau.¹¹³ For such writers, appeal to Thomas is not merely opportunistic as they show a genuine interest in the thought of Thomas Aquinas and, in at least some cases, have published serious monographs on other elements of Thomas's thought. Nevertheless, if the appreciation of Thomas is genuine, these authors also wish to use his thought to promote a more permissive attitude towards practices such as abortion and embryonic stem cell research. In this they are very different from an earlier generation of Thomists (such as Mercier, de Dorlodot, Hering, Reany and Maritain) who defended delayed animation but not DAAA. These earlier Thomists, like Thomas himself, regarded the deliberate destruction of the early embryo as gravely wrong.

Donceel defends the idea that the embryo is not a human person until he or she has the organs necessary for rational functioning, that is, until the development of 'the brain, and especially the cortex'.¹¹⁴ Similarly Coughlan, Porter, Dombrowski, Deltete and Pasnau focus on the capacity for rational functioning or at least for consciousness. This is superficially similar to the distinction

¹⁰⁷ J. Mahoney *Bioethics and Belief* (London: Sheed & Ward, 1984), pp. 75-77.

¹⁰⁸ Donceel, 'Immediate Animation', p. 100.

¹⁰⁹ Donceel, 'Immediate Animation', p. 83.

¹¹⁰ M.J. Coughlan, *The Vatican, the Law and the Human Embryo* (London: Macmillan, 1990).

¹¹¹ J. Porter, 'Individuality, Personal Identity, and the Moral Status of the Preembryo: A Response to Mark Johnson', *Theological Studies* 56 (1995).

¹¹² Dombrowski and Deltete, *A brief liberal Catholic defense of abortion*.

¹¹³ Robert Pasnau, *Thomas Aquinas on Human Nature* (Cambridge: CUP, 2001).

¹¹⁴ Donceel, 'Immediate Animation', p. 83.

between a human being and a person made by secular bioethicists such as Fletcher, Tooley, Singer, and Harris. However, this secular bioethical school of thought is distinct from Thomism both in its origin and its character. The 'personhood' philosophers (if they can be termed such) were influenced by Locke's definition of a person: 'most current accounts of the criteria for personhood follow John Locke in identifying self-consciousness coupled with fairly rudimentary intelligence as the most important features'.¹¹⁵ They assimilate personhood to personality or memory, in marked contrast to the accounts of personhood of the kind propounded by Aristotle, Boethius or Thomas Aquinas, who regard the person as an individual substance.¹¹⁶ Personhood philosophers also tend to place the emergence of personhood in infancy, several months after the child is born. Donceel and Thomists who follow his line of thought strongly resist the claim that hominization occurs after the child is born, 'The Church has condemned this position and rightly so'.¹¹⁷ Nevertheless, if what is needed is not the immediate capacity for rational acts (which is not demonstrable until long after the child is born), but rather, an active potential of a more radical kind, then this would seem to be present already in the embryo that has an active potential to develop a brain. This point is emphasised by the moral theologian Norman Ford.

'One weakness in Donceel's position is the unjustified demand for the formation of sense organs and of the brain for rational ensoulment once it is admitted there are no actual rational functions performed for two years.'¹¹⁸

Donceel's account of delayed hominization also overlooks the significance of the power of development that the embryo is now known to possess. From a Thomistic perspective, if a being possesses a power to develop a power (for example the power to learn to speak French) this is sufficient to demonstrate what kind of thing it is (a linguistic animal). Thomas mistakenly thought that the human embryo only possessed a passive power to develop. He thought development was driven and shaped not from within but from without, by the power of the male parent through the seed as an instrument. However if, in line with modern biology, one regards development as a *power of the embryo*, the possession of this power implies the presence in the embryo of a specifically human soul.¹¹⁹ Pasnau recognised this difficulty and maintained that it is the parent's DNA in the embryo that plays the role that Thomas ascribed to the power in the seed. It transforms the embryo until the embryo becomes a specifically human animal.¹²⁰ However, the abstraction of the DNA from

¹¹⁵ Harris, 'Euthanasia and the Value of Life', p. 8.

¹¹⁶ G.E.M. Anscombe, *Human Life, Action and Ethics Essays by G.E.M. Anscombe* Luke Gormally, Mary Geach (eds.) (St. Andrews: St Andrews Studies in Philosophy & Public Affairs, 2005) p. 268; D.A. Jones, 'Incapacity and personhood: respecting the non-autonomous self', in H. Watt (ed) *Incapacity and Care: Controversies in healthcare and research* (London: The Linacre Centre, 2009).

¹¹⁷ Donceel, 'Immediate Animation', p. 101.

¹¹⁸ Ford *When did I begin?*, p. 52.

¹¹⁹ Jones, 'The human embryo in the Christian tradition', p. 712; J.T. Eberl, 'Aquinas's Account of Human Embryogenesis and Recent Interpretations', *Journal of Medicine and Philosophy* 30 (2005), pp. 379-394, p. 386; S. Heaney, 'Aquinas and the Presence of the Human Rational Soul in the Early Embryo', *The Thomist* 56.1, (1992), pp. 19-48, pp. 27-30; J. Haldane and P. Lee, 'Aquinas on Human Ensoulment, Abortion, and the Value of Life', *Philosophy* 78 (2003), pp. 255-278, pp. 270-271.

¹²⁰ Pasnau, *Thomas Aquinas on Human Nature*, p. 103. ; Haldane and Lee, 'Aquinas on Human Ensoulment', p. 271.

the embryo as a whole, and indeed the abstraction of development from all other vital activities of the organism (which are likewise regulated by DNA), is not tenable as a philosophy of biology.

Individuation-related accounts of animation

Norman Ford criticised Donceel for his supposition that an embryo is not human until he or she has a functioning brain, a supposition that both seems unnecessary and seems to imply too much (that a child is not human until it actually exercises the power of reason). Nevertheless, if the embryo is a human being from the moment that it is a living individual with the power to develop, this still leaves the question of when the embryo becomes a living *individual*. One alleged proof of delayed hominization referred to in passing by Donceel¹²¹ is the argument that the early embryo is not yet an individual because it is possible within the first two weeks for one embryo to split so as to form identical twins. From this Donceel concluded that the early embryo is not yet an individual and hence cannot be a human individual with a rational soul.

Arguments based on the phenomenon of twinning constitute a distinct form of DAAA based not on the need for a brain but on the concept of individuation. This is a very different form of delayed animation position with different implications. Technically it is not a form of DAAA in that it does not justify abortion, because animation is placed around the time of implantation and well before a woman would know she was pregnant. However, individuation-related arguments could be and have been used to advocate experimentation on human embryos and/or forms of birth control that appear to act after fertilisation by disrupting implantation (and hence lead to the destruction of human embryos). The use of delayed animation to defend destruction of human embryos is closely analogous to DAAA and for ease of reference will be termed here an individuation-related DAAA.

The Jesuit Richard McCormick, employed an individuation-related DAAA to justify his decision, as a member of the Ethics Advisory Board in 1979, to endorse the use of human embryos who are not older than 14 days.¹²² McCormick likewise defended the use of the term 'pre-embryo' to refer to the first two weeks of human development.¹²³ This same argument has been used by a number of other Catholic moral theologians including Curran,¹²⁴ Mahoney¹²⁵ and Eberl.¹²⁶ These authors accepted

¹²¹ Donceel, 'Immediate Animation', p. 99 who takes this argument from P. Schoonenberg *Gods wordende wereld* (The Hague, 1962), p. 51.

¹²² Ethics Advisory Board *Report and Conclusions: HEW Support of Research Involving Human In Vitro Fertilization and Embryo Transfer* Department of Health, Education, and Welfare, 4 May 1979; T. Banchoff *Embryo Politics: Ethics and Policy in Atlantic Democracies* (Ithaca NY: Cornell U Press, 2011), pp. 35-39.

¹²³ R. McCormick, 'Who or What is the Pre-Embryo?' *Kennedy Institute of Ethics Journal*, 1 (1991), pp.1-15.

¹²⁴ Curran, 'abortion', p. 188.

¹²⁵ Mahoney, *Bioethics and Belief*, p. 67.

¹²⁶ J.T. Eberl, 'Aquinas's Account of Human Embryogenesis and Recent Interpretations', *Journal of Medicine and Philosophy* 30 (2005), pp. 379-394.; J.T. Eberl, 'The beginning of personhood: A Thomistic biological analysis', *Bioethics*, 14.2, (2000), pp. 134-157. Note that there are also some authors who utilise the argument from individuation to rule out animation at fertilisation, but who in fact favour a brain-related DAAA, for example T. Shannon, A. Wolter, 'Reflections on the moral status of the pre-embryo', *Theological Studies* 51.4, (1990), pp. 603-26; Porter, 'Individuality, Personal Identity, and the Moral Status'.

embryo experimentation but not the liberalisation of abortion law (or at least, they did not regard delayed animation as a reason for such liberalisation).¹²⁷

Perhaps the most well-known advocate of the individuation-related argument is Norman Ford in his book *When did I begin?* This book was written in 1988 four years after the Warnock report and two years before embryo experimentation was legalised in the UK by the Human Fertilisation and Embryology Act 1990. Warnock even contributed a foreword to the book. The book has had a significant impact and has helped undermine the case for the protection of the early embryo.

It should be noted, however, that Ford was *not* himself in favour of experimentation on embryos. He always argued that even the earliest human embryo deserves 'absolute respect'.¹²⁸ In this his attitude was quite unlike that of McCormick who used delayed animation as a reason for defending embryo research. Thus while Ford defended an individuation-related form of delayed animation, he did not defend individuation-related DAAA, because he did not use it to defend the destructive use of human embryos. Ford, like Elizabeth Anscombe, who held a similar view,¹²⁹ was closer in attitude to the delayed animationists writing between 1900 and 1950, and indeed to Thomas Aquinas himself, in defending delayed animation but not stripping the embryo of protection. Ford may have been naïve in making this argument how and when he did, but in fact he was not in favour of the legislation he helped to facilitate.

It has been argued in this paper that, among DAAAs, those that appeal to anthropology are stronger than those that appeal only to historical precedent. Among DAAAs that appeal to anthropology, those related to individuation seem to be more widely accepted than those related to brain function. Nevertheless, while the phenomenon of twinning has led people to conclude that the human embryo is not truly an individual, this argument is not as strong as it first appears.

From a biological perspective individuality need not imply indivisibility (in the sense of the inability to develop into multiple individuals). Many biological organisms are divisible at different stages of development. The early embryo is, from the first, a whole and it develops as a whole. When the cells divide, the daughter cells have position in relation to the whole and the future differentiation of

¹²⁷ Curran in 1973 defended a permissive approach to abortion legislation not on the basis of delayed animation (which he did not place late enough in pregnancy to be relevant to abortion) but on the basis of political pluralism. In this he followed R. Drinan, 'Catholic Moral Teaching and Abortion Laws in America', *Proceedings of the Catholic Theological Society of America*, XXIII (1968), pp. 118-130, though he did not go as far as Drinan who had argued that there should be *no* criminal sanctions for abortion (Curran, 'Abortion', p. 170).

¹²⁸ N. Ford, *The Prenatal Person* (Oxford: Blackwell Publishing, 2002), p. 68.

¹²⁹ G.E.M. Anscombe, 'Were you a Zygote?', in Griffiths, A.P. (ed.), *Philosophy and Practice* (Cambridge: Cambridge University Press, 1985); G.E.M. Anscombe, 'The Early Embryo. Theoretical Doubts and Practical Certainties', in G.E.M. Anscombe *Faith in a Hard Ground. Essays on Religion, Philosophy and Ethics*, M. Geach, L. Gormally (eds), (Exeter: Imprint Academic, 2008). For another similar view see R. Berquist, 'Abortion and the Right to Life Before Personhood', in S.J. Heaney, *Abortion: A New Generation of Catholic Responses* (Braintree, MA: The Pope John Centre, 1992). Nevertheless, it is striking how little support or even attention this position has attracted since the emergence of prominent Catholic forms of DAAA in 1970. By and large those who support delayed animation now accept DAAA and those who extend protection to the embryo from fertilisation defend immediate animation, at least as a probable opinion.

cells is a function of this position. This is so notwithstanding the fact that if some cells are detached from the whole, the embryo can sometimes reorganise so that no harm is done to its development. The early human embryo is certainly a biological individual.

Divisibility is a problem not in relation to biology but only in relation to the rational soul which, according to Catholic doctrine, is immortal.¹³⁰ However, if God can create and infuse a soul into the embryo at fertilisation then there is no reason to doubt that God could create and infuse further souls according to the multiplication of bodies. Twinning could then be understood as analogous to asexual reproduction in simpler animals, whereby new life is generated by division rather than by union. Thus, according to Thomas, a simple animal has ‘one soul in act and many in potency’.¹³¹ This may be unusual and unexpected but both nature and grace include many unusual and unexpected things. What it is not, is a contradiction in terms.¹³²

It is in response to this and other arguments that Norman Ford, the most able and articulate defender of delayed animation by reason of delayed individuation, has subsequently abandoned this position. He has come to accept that the potential for twinning does not entail that the developing embryo is not an individual. Hence in 2007 he joined other Catholic bioethicists in affirming that ‘the human embryo, at every stage of development, is a human being with potential and not just a “potential human being”’.¹³³ Similarly Jason Eberl, who in 2005 defended an individuation-related form of DAAA¹³⁴ by 2007 under the influence of Germain Grisez,¹³⁵ Jan Deckers¹³⁶ and others changed his view and came to accept animation at fertilisation.¹³⁷ The same is true of some proponents of individuation-related DAAA outside the Catholic context, as is evident for example between the first (1996) and second (2005) edition of Gilbert Meilaender’s *Bioethics: A Primer for Christians*.¹³⁸

¹³⁰ For example Declaration of Lateran V, see Denzinger and Rahner, *Enchiridion Symbolorum*, p. 272.

¹³¹ Thomas Aquinas *Quaestiones Disputatae de Spiritualibus Creaturis*, IV ad 19.

¹³²¹³² Haldane and Lee, ‘Aquinas on Human Ensoulment’, p. 273, note 26; Jones, *Soul of the Embryo*, pp. 224–227; A. Fisher, ‘Individuogenesis and a Recent Book by Fr Norman Ford’, *Anthropotes* 7.2, (1991), pp. 199–244; K. Flannery, ‘Aristotle and contemporary embryology’, *The Thomist* 67.2, (2003), pp. 249–278; A. Gómez-Lobo, ‘Individuality and Human Beginnings: A Reply to David De Grazia’, *Journal of Law, Medicine and Ethics* 35.3 (Fall 2007), pp. 457–462.

¹³³ International Association of Catholic Bioethicists (IACB), ‘Statement on Stem Cell Research and Regenerative Medicine’, *National Catholic Bioethics Quarterly*, 8:2 (2008), p. 334.

¹³⁴ J.T. Eberl, ‘Aquinas’s Account of Human Embryogenesis’.

¹³⁵ Grisez, ‘When Do People Begin?’.

¹³⁶ J. Deckers, ‘Why Eberl is Wrong. Reflections on the Beginning of Personhood’, *Bioethics* 21.5, (2007), pp. 270–282.

¹³⁷ J.T. Eberl, ‘A Thomistic Perspective on the Beginning of Personhood: Redux’, *Bioethics*, 21 (2007), pp. 283–289.

¹³⁸ G Meilaender’s *Bioethics: A Primer for Christians* (Grand Rapids, MI: Eerdmans, 1996), p.31; G Meilaender’s *Bioethics: A Primer for Christians* (Grand Rapids, MI: Eerdmans, 2005), p. 30–13,

In summary, while among contemporary Thomists, a number have argued that the rational soul is not present until sometime after conception, there is an important division among these thinkers as to whether ensoulment only occurs with brain development or whether it has could already have occurred by the 14-day stage. And if it is granted that the soul may already be present at 14 days after fertilisation, then the arguments against the presence of a soul from the very beginning do not seem indefeasible. Thus there are many Thomists who now argue that, 'applying Aquinas's metaphysical principles to the embryological facts uncovered since his time leads to the conclusion that the human being is present from fertilization on.'¹³⁹

If this body of respected theological opinion is sufficient to render immediate animation credible as a Christian opinion (which is more or less what the tradition understood by the word 'probable') then this presents a serious obstacle for anyone seeking to apply individuation-related DAAA in practice. If, from a contemporary Thomist perspective, the arguments are such that there is at least a reasonable doubt that the soul might be present from conception, then it seems that the embryo should receive the benefit of this doubt. On this basis, justice and charity would then require that, even if a human embryo were not certainly a person, he or she would nevertheless merit that utmost respect that is due to a human person. This interestingly seems to have been the practical conclusion of Norman Ford even when he himself was still inclined to accept a form of delayed animation.

'The Catholic Church has expressly not committed its teaching authority to the view that the zygote is already a person but admits there are reasonable grounds to support a personal presence in the zygote and consequently teaches, rightly in my view, that the human zygote should be morally and legally protected as a person. In this situation, Parliament, at least for the sake of its own moral standing in the community, should give the benefit of the doubt to the human embryo and ban all destructive experimentation on human embryos.'¹⁴⁰

¹³⁹ Haldane and Lee, 'Aquinas on Human Ensoulment', p.271. Others to defend this conclusion include: B. Ashley, 'A Critique of the Theory of Delayed Hominisation', in D.G. McCarthy and A. S. Moraczewski (eds) *An Ethical Evaluation of Fetal Experimentation* (St Louis: Pope John XXIII Center, 1976); B. Ashley, and A. Moraczewski, 'Cloning, Aquinas, and the Embryonic Person', *National Catholic Bioethics Quarterly*, 1 (2001), pp. 189-201; Austriaco, 'Immediate Hominization'; D. Bradley, "'To Be or Not to Be?": Pasnau on Aquinas's Immortal Human Soul', *The Thomist* 68, (2004) pp. 1-39; Deckers, 'Why Eberl is Wrong'; Eberl, 'A Thomistic Perspective'; Flannery, 'Aristotle and contemporary embryology'; Fisher, 'Individuogenesis'; Grisez, 'When Do People Begin?'; Gómez-Lobo, 'Individuality and Human Beginnings'; Heaney, 'Aquinas and the Presence of the Human Rational Soul'; IACB 'Statement on Stem Cell Research'; T. Iglesias, 'What Kind of Being Is a Human Embryo?' in N. Cameron ed. *Embryos and Ethics* (Edinburgh: Rutherford House, 1987); Johnson, 'Delayed Hominization'; Jones, *Soul of the Embryo*, pp. 238-240.; R. Joyce, 'The Human Zygote Is a Person', *The New Scholasticism* 51 (1975); R. Koch-Hershenov, 'Totipotency, Twinning, and Ensoulment at Fertilization', *Journal of Medicine and Philosophy*, 31, (2006) pp. 139-164; W.E. May, 'The Moral Status of the Embryo', *Linacre Quarterly*, (1992) 59; A. Regan, 'The Human Conceptus and Personhood', *Studia Moralia* 30 (1992), pp. 97-127; J. Siebenthal, 'L'animation selon Thomas D'Aquin', in *L'Embryon: Un Homme: Acts de Congres de Lausanne 1986* (Lausanne: Société suisse de bioéthique, 1986); A. Suarez, 'Hydatidiform Moles and Teratomas Confirm the Human Identity of the Pre-implantation Embryo', *Journal of Medicine and Philosophy* 15, (1990), pp. 627-635; C. Tollefsen, 'Embryos, Individuals and Persons', *Journal of Applied Philosophy* 18.1, (2001); N. Tonti-Filippini, 'Further Comments on the Beginning of Life', *Linacre Quarterly* 59 (1991).

¹⁴⁰ N. Ford, 'A Reply To Michael Coughlan', *Bioethics* 3.4 (1989), p. 342. Note that, while the official teaching of the Catholic Church is that the embryo should be *treated as* a person, the Church has not formally defined that animation certainly occurs at conception; 'The Magisterium has not expressly committed itself to an

Conclusions

The aim of the paper has been to trace the origin of a recent argument about abortion and embryo experimentation and to show how different expressions of the argument have emerged in different contexts. Though typically the argument is framed as an appeal to precedent, it transpires that there is little or no precedent for DAAA before the middle of the twentieth century.

From the late 1950s the argument begins to appear first in secular contexts, then in the 1960s in Anglican and Catholic contexts. Some expressions of DAAA, especially those repeated in popular media and on the internet are little more than opportunistic appeals to history without serious engagement with the basis of the tradition. Despite the popularity of such expressions of DAAA, appeal to precedent alone is not a cogent argument.

Other forms of DAAA raise important anthropological questions. Of these, the weakest expressions of DAAA are those which implicitly or explicitly rely on the analogy between embryonic development and the evolution of species. All analogies limp and to justify the applicability of this analogy would require more careful philosophical analysis than it has thus far attracted. Much stronger are those expressions of DAAA which appeal to Thomist philosophical principles and among these, the arguments concerned with the individuation of the embryo are more widely accepted than those that focus on brain function. Nevertheless even the stronger DAAAs are not indefeasible and in this paper it has been argued that, given the presence of a reasonable case that the soul may be present from fertilisation, then the human embryo should be granted the respect and protection due to a person.

affirmation of a philosophical nature, but it constantly reaffirms the moral condemnation of any kind of procured abortion,' Congregation for the Doctrine of the Faith *Donum Vitae* 1988:I.1, a stance maintained by John Paul II *Evangelium vitae* 1995: 60 and the Congregation for the Doctrine of the Faith in *Dignitas personae* 2008:5.